

ORLEANS PARISH SCHOOL BOARD



COMPLIANCE AUDIT

ISSUED AUGUST 24, 2005

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August 24, 2005

**MR. TORIN SANDERS, PRESIDENT, AND
MEMBERS OF THE ORLEANS PARISH
SCHOOL BOARD**

New Orleans, Louisiana

We have audited certain transactions of the Orleans Parish School Board (OPSB) in accordance with Title 24 of the Louisiana Revised Statutes. Our audit was performed to substantiate or refute allegations of improprieties within the OPSB.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*; therefore, we are not offering an opinion on the OPSB's financial statements or system of internal control nor assurances as to compliance with laws and regulations.

The accompanying report presents our findings and recommendations as well as management's response. Copies of this report have been delivered to the District Attorney for the Orleans Parish Judicial District and others as required by state law.

Respectfully submitted,

Steve J. Theriot, CPA
Legislative Auditor

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Unauthorized and Undocumented Stipend Wages

From January 1, 2004, to December 31, 2004, the Orleans Parish School Board (OPSB) paid \$14,920,841 in stipend wages to 6,762 employees. Of the 6,762 employees, 758 received over \$5,000 each in stipend wages. The district pays stipends to employees for additional work outside of normal job duties such as tutoring, professional development, or curriculum development at rates of \$20 to \$29 an hour. We reviewed the payroll records of six employees paid over \$20,000 each of stipend wages in addition to their regular salary during calendar year 2004 and found the following conditions:

1. An administrator in the Numeracy department paid her daughter-in-law at least \$1,120 in stipend wages for work she did not perform.
2. Employees received stipend wages for performing unsupervised work at their homes.
3. The payroll department ignored school district policy and paid stipend wages without proper approval.
4. Time sheets and payroll records were missing from the payroll department.
5. There is no board policy which defines approved activities or employees eligible to receive stipend wages.
6. The practice of paying stipend wages for extra work may violate the board policy of not paying overtime to administrative staff.
7. A principal received \$22,870 in stipend wages but did not maintain a record of the hours she worked.

Stipend Wages Paid From January 1, 2004, to December 31, 2004			
Total Stipend Wages	Number of Employees	Amount	Average Stipend Wages Per Employee
>\$20,000	13	\$358,227	\$27,556
\$15,000 - \$20,000	18	300,743	16,708
\$10,000 - \$15,000	83	970,318	11,691
\$5,000 - \$10,000	644	4,267,040	6,626
< \$5,000	6,004	9,024,513	1,503
Total	6,762	\$14,920,841	\$2,207

Background

According to OPSB policy, professional administrative employees cannot receive overtime pay for work performed beyond their normal work hours. However, the OPSB does engage in the practice of paying “stipends” to employees for work performed beyond their normal work hours. There is no OPSB policy which defines extra work or class of employee eligible for stipend wages. As a result, any employee including professional administrative

employees are paid stipend wages for work outside of the employee's normal work hours. We could not determine the difference between stipend pay and overtime pay. According to Arthur Johnson, OPSB's Administrator of Consolidated Programs and External Grants, he is suspicious of any employee that receives more than \$5,000 in stipend wages annually and would consider further investigation of the employee's payroll records. Based on Mr. Arthur Johnson's statements, we examined six employees who received greater than \$20,000 each in stipend wages during the year to determine if the payments were properly authorized, documented, and earned by the employees.

Numeracy and Literacy Departments

The Numeracy and Literacy departments are responsible for developing curriculum, training teachers, and performing assessments of school math and literacy programs. The programs employ administrators and team leaders at the central office and instructional coaches at the schools. The departments also employ an administrative secretary and two individuals responsible for proofreading curriculum materials. Both departments pay employees stipends for work performed beyond normal work hours and outside of normal job duties at rates of \$20 an hour for teachers and \$29 an hour for administrators.

Ms. Mary Thompson, former interim director of the Numeracy and Literacy departments, approved all stipend payments for both programs. The executive secretary, Ms. Brenda Berteaux, monitors department employees' work hours from sign-in sheets at the central office and submits time sheets to the payroll office. According to Ms. Mary Thompson, any hours worked developing curriculum are considered stipend hours. These additional hours are reviewed and submitted to payroll by Ms. Thompson on a separate document for a stipend payment. According to Mr. Arthur Johnson, he has to approve all stipend wages for the Numeracy and Literacy departments before they are paid.

Nine employees in the Numeracy and Literacy departments received over \$20,000 in stipends in 2004. We reviewed stipend payment records for five of the nine employees and found the following:

Mary Thompson

The payroll office does not have a written policy specifying the employee(s) authorized to approve stipend payments. On December 7, 2004, Dr. Ora Watson, then Deputy Administrator for Academics and Operations, e-mailed a policy to the payroll supervisor, area superintendents, human resource director, information technology director, and budget director requiring all future stipend payments to be approved by her and paid once per month. We noted two instances in January 2005 where payroll office employees processed two stipend payments of \$560 each submitted and approved by Ms. Thompson without Dr. Watson's approval. The stipend requests included payments to Ms. Mary Thompson's daughter-in-law, Ms. Trina Thompson, for the Leap 21 Power Hour Tutoring program at Langston Hughes Elementary and F.W. Gregory Middle schools.

The schools' records indicate that Ms. Trina Thompson did not work at either school; however, the payroll department's copies of the forms indicate Ms. Trina Thompson worked at both schools. These forms were submitted by the school principals to Ms. Mary Thompson at the central office for approval. The principals at both schools do not know Ms. Trina Thompson and stated she did not work at their school or with the tutoring program. Ms. Mary Thompson admitted she added Ms. Trina Thompson to the stipend payment requests and time sheets after she received them from the school principals. She then authorized the payments and sent them to the payroll department. Ms. Mary Thompson further stated she heard a rumor the Legislative Auditor was watching certain payroll transactions and wanted to see if she would get caught and that she has always challenged the system.

The checks were printed and delivered to Ms. Trina Thompson. Ms. Trina Thompson stated she did not work on the tutoring program and did not cash either check. She provided representatives of the Legislative Auditor both original, non-negotiated checks.

According to OPSB records, Ms. Mary Thompson received 34 stipend payments totaling \$38,677 during 2004, an average of 26 hours each week in addition to her regular full-time salary of \$49,034. OPSB policy 4143.1 exempts employees at Ms. Mary Thompson's pay grade from overtime pay or compensatory time. Ms. Mary Thompson acknowledged she is not eligible for overtime, but receives a stipend when she works past her normal hours developing curriculum because it is not part of her job duties. She further stated she works on curriculum development during the day when time is available; however, it is difficult for her to do so because of administrative tasks such as phone calls she receives from the schools. Ms. Mary Thompson further stated she determines when her normal work day ends and her hours become classified as a stipend. According to Ms. Thompson, she approves stipend payments to herself.

Mr. Johnson stated Ms. Thompson is an administrator and is not entitled to stipend payments, except for weekend training, work with teachers, or the District Assessment Team (DAT) Program. Mr. Johnson also stated he was unaware of the stipend payments made to Numeracy employees and that Ms. Thompson should be aware of the district's unwritten policy requiring all stipend payments be approved by him. According to Mr. Johnson, he does not receive reports of stipends paid to Ms. Thompson, and therefore he is unaware of stipend payments charged to grants he supervises.

Of the \$38,677 in stipend payments made to Ms. Mary Thompson, \$1,750 was approved for payment by Mr. Johnson (this payment was for the DAT Program); \$8,573 was not approved for payment by Mr. Johnson; and \$28,354 in payments was not properly supported by payroll office records which would indicate if Mr. Johnson approved the payments.

Trina Thompson

Ms. Trina Thompson is a special education teacher in her fourth year of employment with the school district. According to OPSB records, she received 40 stipend payments totaling \$35,874 during calendar year 2004 in addition to her regular full-time teaching salary of \$32,280. We reviewed Ms. Trina Thompson's payroll records and found stipend payment requests for 14 of the 40 payments. Of the existing 14 stipend payment requests, Ms. Mary Thompson approved 12 and Mr. Arthur Johnson approved two.

We questioned Ms. Trina Thompson to determine what duties she performed to be eligible for the stipend payments. Ms. Trina Thompson stated she works an average of four to eight hours a day unsupervised, at her home, proofreading Numeracy materials. She keeps a log on notebook paper of the number of hours she works each day and submits it to Ms. Mary Thompson once a week. Ms. Mary Thompson then transfers the hours from Ms. Trina Thompson's handwritten notes to the time sheet. Neither Ms. Mary Thompson nor Ms. Trina Thompson could provide time records for Ms. Trina Thompson or any work product from Ms. Trina Thompson's proofreading. Ms. Mary Thompson stated she destroys all proofreading documents after the edits are made to ensure the most recent version of the document is sent to the schools.

In addition to her full-time teaching and part-time proofreading jobs, Ms. Trina Thompson is a mother and graduate student attending the University of New Orleans (UNO). During calendar year 2004, she averaged 34 hours each week of additional work. We reviewed the existing time sheets from Ms. Mary Thompson's records and noted four occasions where Ms. Trina Thompson was proofreading during the same time period she had scheduled classes at UNO. Ms. Trina Thompson stated it was very unlikely she missed the classes. She further stated she did not fill out the time sheets and could not explain the discrepancies. According to Ms. Mary Thompson, she completes Ms. Trina Thompson's time sheets but does not record the exact beginning and ending hours Ms. Trina Thompson worked.

We also found two instances where two stipend requests were submitted for the same pay period. Ms. Trina Thompson was unaware of these transactions and could not explain the inconsistencies.

Of the \$35,874 in stipend payments made to Ms. Trina Thompson, \$1,920 was approved for payment by Mr. Johnson; \$10,650 was not approved for payment by Mr. Johnson; and \$23,304 in payments was not properly supported by payroll office records which would indicate if Mr. Johnson approved the payments.

Cheryl Huckaby

Ms. Cheryl Huckaby is a 24-year teacher at Warren Easton High School. According to OPSB records, she received 46 stipend payments totaling \$42,684 in addition to her regular full-time teaching salary of \$43,167 during 2004, an average of 41 hours of additional work each week. We reviewed Ms. Huckaby's payroll records and found stipend payment requests for 13 of the 46 stipend payments. Ms. Mary Thompson approved 10 of the 13 existing stipend payment records.

According to Ms. Huckaby, she began performing work for the Numeracy and Literacy departments under the supervision of Ms. Mary Thompson in the fall of 2003. She was assigned to assist in curriculum development, proofreading and editing curriculum materials, Internet research, and classroom development. Ms. Huckaby stated she picked up the materials to proofread from the Numeracy office or the materials were delivered to her school. Ms. Huckaby further stated she worked unsupervised at her residence four to five nonconsecutive hours each night after work from Monday to Thursday. On Friday evenings, she usually drove to Baton Rouge and spent the weekend with her mother in a nursing home. Ms. Huckaby estimated she worked 14 to 15 hours each day on the weekend while visiting her mother.

After Ms. Huckaby completed the proofreading or other assignments determined by Ms. Mary Thompson, she returned the completed work to Ms. Mary Thompson, Ms. Ivory, Mr. Sparks, or the Numeracy secretary, Ms. Berteaux. According to Ms. Huckaby, she reported her work hours to Ms. Mary Thompson orally and did not submit time sheets. Ms. Huckaby was unable to provide any work product for the stipend payments she received.

Of the \$42,684 in stipend payments made to Ms. Huckaby, \$1,520 was approved for payment by Mr. Johnson; \$11,180 was not approved for payment by Mr. Johnson; and \$29,984 in payments was not properly supported by payroll office records which would indicate if Mr. Johnson approved the payments.

Wanda Wilson

Ms. Wilson is an Interim Numeracy Instructional Specialist and 32-year employee with the school district. Ms. Wilson's pay grade is above 11, and according to board policy, is not eligible to receive overtime. According to OPSB records, she received 38 stipend payments totaling \$34,810 during 2004 in addition to her regular salary of \$45,419, an average of 33 hours of additional work each week. We reviewed Ms. Wilson's payroll records and found supporting documentation for eight of the 38 stipend payments. According to Ms. Wilson, her normal job duties include advising Numeracy coaches on teaching methods, developing curriculums, working on Numeracy Enhancement Test, developing vacation school curriculums, and supporting Numeracy coaches and principals at assigned schools. According to Ms. Wilson, if she performs any of these duties after 4:30 p.m., she receives a stipend payment.

In addition to her duties as an Interim Numeracy Instructional Specialist, Ms. Wilson also works as a DAT leader for two schools in the district. A DAT leader observes classroom activity and collects surveys from principals, teachers, students, and parents and sends the results to the Department of Education for analysis. According to Ms. Wilson, she performs some of her duties as a DAT leader (such as classroom observation) during the normal work day, without taking leave, and receives payment for both jobs. Ms. Consuela Ferrier, DAT Program Specialist, stated it is common practice for employees working with the DAT program to be assigned schools they already visit for existing job duties. The employee does not take leave for the period he/she works on the DAT program even though the employee receives additional compensation. Each employee is paid \$1,750 each semester for each school that he/she performs DAT leader duties.

We provided Ms. Wilson with payroll records indicating on January 16, 2004, she received three stipend payments totaling \$1,680 for 84 hours of work in addition to her normal duties for the two-week pay period. Ms. Wilson stated she worked all the time she submitted; however, she believes that the school district paid her multiple times for the same work hours.

Of the \$34,810 in stipend payments made to Ms. Wilson, \$2,190 was approved for payment by Mr. Johnson; \$4,720 was not approved for payment by Mr. Johnson; and \$27,900 in payments did not have related payroll records to support whether Mr. Johnson approved the payments.

Frank Sparks

Mr. Sparks is a Numeracy Instructional Specialist at the central office in his fourteenth year of employment with the school board. Mr. Sparks has a pay grade level above 11, and according to board policy, is not eligible to receive overtime. According to OPSB records, Mr. Sparks received 31 stipend payments totaling \$22,434 during 2004 in addition to his regular salary of \$47,941, an average of 15 hours of additional work each week. We reviewed Mr. Sparks payroll records and found supporting documentation for eight of the 31 stipend payments. Mr. Sparks stated he is certain he worked all the hours he reported and was paid accurately.

According to Mr. Sparks, he had to quit his part-time job at Delgado University when his work hours increased after Ms. Mary Thompson became his supervisor, and he did not consider the added work part of his job duties.

Of the \$22,434 in stipend payments made to Mr. Sparks, \$550 was approved for payment by Mr. Johnson; \$5,180 was not approved for payment by Mr. Johnson; and \$16,704 in payments was not properly supported by payroll office records which would indicate if Mr. Johnson approved the payments.

Kathleen Riedlinger

According to OPSB records, the principal of Lusher Elementary and Lusher Extension schools, Ms. Kathleen Riedlinger, received \$22,870 in stipend payments during 2004 funded, in part, by donations from the Lusher Parent Teacher Student Association (PTSA) in addition to her regular full-time salary of \$53,550. According to Ms. Riedlinger, even though she was paid hourly for the stipend payments, she did not maintain records to indicate the hours she worked. OPSB payroll records indicate Ms. Riedlinger would have worked an average of 15 hours of additional work each week at \$29 per hour to receive the \$22,870 in stipend payments.

Ms. Riedlinger stated she is paid \$29 per hour for the after-school program, but she does not maintain a record of the actual hours she works. As a matter of practice, Ms. Riedlinger submits the amount remaining from PTSA funding after all other expenses are paid as a stipend payment for her. Since Ms. Riedlinger did not keep time records, we could not determine if she was paid accurately. Ms. Riedlinger requires all other employees at Lusher that work on after-school programs to maintain time sheets to document the amount of time they work. These time sheets are used to determine the stipend payments to the teachers. The time sheets are reviewed and approved by Ms. Riedlinger, then forwarded to the central office through Dr. Stafford, area superintendent, or Dr. Watson, for approval, before they are submitted to payroll.

Mr. William Lurye, Ms. Riedlinger's legal counsel, stated the after-school programs are funded by Lusher's PTSA but are properly approved and do not violate the Louisiana Code of Governmental Ethics.¹ Mr. Lurye provided documentation supporting his argument for compliance with state law. However, a review of the supporting documentation indicated the following:

1. Ms. Susan L. Krinsky, treasurer of the Lusher PTSA, requested, on PTSA letterhead, a stipend payment be made by OPSB to 20 employees of the Lusher School to include Ms. Riedlinger.
2. The PTSA's request states, in part, "we are making a donation to the Orleans Parish School Board in the amount of \$4,087 (BSA check #210) with the intent that these funds will be used to compensate the following individuals. . ."
3. The request included a calculation to reflect each employee's work and payment amount and included a donation equal to the amount calculated for all employees.

¹ **R.S. 42:1111** No public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position.

Based on Mr. Lurye's supporting documentation, the stipend payments may not comply with the Ethics Advisory Opinion #2000-205, which require donations to the school board to be unconditional, even if the school board chooses to use the money donated to pay the teachers.

Based on the statements from the employees and board policy and existing payroll documentation, we cannot determine if the six employees in this report were paid accurately or performed work equivalent to the pay they received. In addition to the stipend wages paid to these six employees, the OPSB paid the additional cost of contributing to their teacher's retirement account.

Comparative Analysis of Additional Compensation

We compared additional compensation paid to teachers, administrators, and support staff of the OPSB to additional compensation paid to teachers, administrators, and support staff at two similar sized school boards, East Baton Rouge Parish and Jefferson Parish. For the purpose of this analysis, additional compensation includes any payment made to an employee in addition to his or her normal salary or hourly rate. This includes compensation for overtime, coaching, tutoring, and miscellaneous stipends. We found the following:

Additional Compensation Analysis - January 1, 2004, Through December 31, 2004					
School Board	Total Students*	Number of Employees**	Total Additional Compensation	Average Per Student	Average Per Employee
Orleans Parish	65,349	8,897	\$21,184,845	\$324	\$2,381
Jefferson Parish	51,666	6,815	6,115,590	118	897
East Baton Rouge Parish	46,928	6,582	3,935,093	84	598

* Source: Department of Education SIS report, October 1, 2004

** Source: Department of Education Annual Financial and Statistical Report (2003-2004), June 2005

We could not determine if all OPSB pay elements are equivalent to East Baton Rouge Parish and Jefferson Parish school boards; therefore, we did not include all OPSB pay elements in the analysis. The OPSB pay elements that appear to be additional compensation but are not in the analysis are as follows: Renaissance (Extended Day), Added Compensation, Salary Supplement, Pay Adjustments, and Certification Adjustments. Those pay elements for calendar year 2004 total an additional \$5,705,117. Based on the analysis, it appears the OPSB is spending an excessive amount of money on additional compensation in comparison to East Baton Rouge Parish and Jefferson Parish school boards.

Employees Improperly Paid Sick Leave Benefits

From 1988 through 2004, the OPSB may have violated the state's constitution and revised statutes by granting 12 employees receiving assault pay (a type of sick leave benefit) 72 salary increases. Two of the 12 employees received 32 salary increases based on their

education and years of experience resulting in an overpayment of at least \$425,665 to the two employees. State law provides that teaching employees are eligible for assault pay benefits when injured or disabled by a student; however, the statute does not allow for salary increases.²

Because the OPSB does not have an effective back-to-work program and provides pay increases to employees receiving assault pay, there does not appear to be an incentive for injured employees to rehabilitate and return to work or apply for disability retirement.

Background

Under Louisiana Revised Statute (R.S.) 17 Section 1201 C. (1) (a) and D, any member of the teaching staff of a public school who is injured or disabled while acting in his official capacity as a result of assault or battery by any student or person is eligible for worker's compensation and sick leave benefits to the extent of his/her salary at the time of injury. After an employee is assaulted while acting in his official capacity, a claim is filed with the school board's workers' compensation carrier. If the employee is not able to return to work, the employee is entitled to receive both assault pay benefits and workers' compensation benefits until the employee is able to return to work.³

The OPSB does not have an effective return-to-work program. An effective return-to-work program would provide a means to return employees to meaningful, productive employment following work-related or off-the-job injuries or illnesses. If an employee is able to work but is unable to return to his/her regular duties, the policy should specify the possible options, when available, for the employee to return to work in a modified or alternative assignment.

During 2004, the OPSB paid \$440,569 in assault pay benefits to 41 employees. We examined records of 25 employees with outstanding assault pay claims at December 31, 2004, and determined 12 employees improperly received at least one salary increase while on assault pay. Mr. Larry Samuel, legal counsel representing some of these employees, has stated “. . . (1) they were not aware of the interpretation of law stating that they were not entitled to receive salary increases while receiving assault pay benefits, and (2) the interpretation of law stating they were overpaid is disputed.” The following are the facts and circumstances of the two employees with the longest assault pay history:

² **R.S. 17:1201 C.(1)(a)** Any member of the teaching staff of the public schools who is injured or disabled while acting in his official capacity as a result of assault or battery by any student or person shall receive sick leave without reduction in pay and without reduction in accrued sick leave days while disabled as a result of such assault or battery.

R.S. 17:1201 D.(1) Any member of the teaching staff in the public schools who is injured or disabled while acting in his official capacity shall be entitled to weekly wage benefits under the worker's compensation law of the state of Louisiana and/or to sick leave benefits under Subpart B of Part X of this Chapter, at his option, but in no event shall such benefits exceed the total amount of the regular salary the member of the teaching staff was receiving at the time the injury or disability occurred.

³ **R.S. 23:1225 C. (1)** requires workers' compensation benefits not to exceed 66 2/3% of the employee's average weekly salary if they are receiving compensation benefits.

Ms. Erromenta Lecour, William Frantz Elementary School Teacher

Ms. Lecour began employment with the OPSB on August 31, 1970. According to the accident report dated January 6, 1988, she fell over a fourth grade student lying on the floor. Since the time of the accident, the OPSB determined the accident to be an assault and Ms. Lecour received workers' compensation benefits and assault pay 16 of her 33 years of employment with the OPSB. Ms. Lecour's biweekly base pay increased 18 times from \$1,251.20 at the date of assault to \$2,235.87 on December 31, 2004, resulting in an overpayment of \$212,936 in possible violation of Article 7, Section 14 of the Louisiana Constitution⁴ and R.S. 17, Section 1201. In addition to the salary overpayment, the OPSB paid the additional cost of contributing to Ms. Lecour's teacher's retirement account. According to Mr. Samuel, Ms. Lecour is not aware of any overpayment.

Ms. Bobbie Anderson, Johnson C. Lockett Elementary School Teacher

Ms. Anderson began employment with the OPSB on August 31, 1970. According to an accident report dated January 31, 1989, she was assaulted by a fourth grade student in her classroom. She received assault pay benefits for 179 (14 years and 11 months) of the next 191 months following her injury. According to Ms. Anderson's personnel and risk management file:

- After approximately five months on assault pay, Ms. Anderson returned from leave on July 5, 1989.
- After approximately three months, Ms. Anderson reverted to assault pay on October 2, 1989.
- After approximately three years and 11 months on assault pay, Ms. Anderson returned from leave on August 26, 1993.
- After approximately three months, Ms. Anderson reverted to assault pay on November 15, 1993.
- After approximately eight months, Ms. Anderson returned from leave on July 14, 1994.
- After three months of work, Ms. Anderson filed another injury report on October 14, 1994, stating she fell after stepping on a plastic barrette, further aggravating her pre-existing condition from the fourth grader's assault in 1989.
- After approximately three more months of work, Ms. Anderson reverted to assault pay on January 20, 1995.
- From January 20, 1995, to December 31, 2004, approximately 10 years, Ms. Anderson continued to receive assault pay.

⁴ **Article 7, Section 14 of the Louisiana Constitution** provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Ms. Anderson filed suit against the OPSB and the Louisiana Insurance Guaranty Association (LIGA) in February 1996, because her workers' compensation and certain medical benefits were terminated by LIGA. The OPSB continued payment of assault leave salary benefits, less workers' compensation, during this period. On February 4, 2000, the court ruled Ms. Anderson was not entitled to workers' compensation benefits from LIGA. Ms. Anderson appealed the ruling, and in August 2001, the Fourth Circuit Court of Appeal reversed the lower court's ruling and ordered LIGA to reinstate workers' compensation benefits to Ms. Anderson retroactive to February 1996. The judgment reads as follows: "Judgment is hereby rendered ordering LIGA to reinstate the payment of workers' compensation benefits to claimant retroactive to February 13, 1996, in accordance with the provisions of the Louisiana Workers' Compensation Act. Judgment is further rendered limiting the amount of assault pay benefits owed by the School Board to the claimant to the amount of assault pay benefits to which claimant was entitled at the time of her injury. The School Board is entitled to a credit for assault payments exceeding that amount."

This judgment, which was not appealed and became final, resulted in two retroactive payments from LIGA to Ms. Anderson in January and February 2002 for indemnity benefits and interest totaling \$107,850. Even though the appellate court limited Ms. Anderson's indemnity benefits and assault pay to her base pay at the time of injury in 1989, the OPSB continued granting her pay increases.

Since January 31, 1989, Ms. Anderson's biweekly base pay increased 14 times from \$1,427.60 (the date of assault) to \$2,235.87 on December 31, 2004. Based on the decision of Fourth Circuit Court of Appeal and R.S. 17, Section 1201, the salary increases may constitute an overpayment to Ms. Anderson of \$212,729. Ms. Anderson's legal counsel, Ms. Diane Lundeen, stated, "Ms. Anderson is not aware of any claimed overpayment"; however, Ms. Lundeen represented Ms. Anderson at the time the Fourth Circuit Court of Appeal ruled as stated above, "Judgment is further rendered limiting the amount of assault pay benefits owed by the School Board to the claimant to the amount of assault pay benefits to which claimant was entitled at the time of her injury. The School Board is entitled to a credit for assault payments exceeding that amount." In addition to the salary overpayments, the OPSB paid the additional cost of contributing to Ms. Anderson's teacher's retirement account.

This information has been provided to the District Attorney for the Third Judicial District of Louisiana and others as required by law. The actual determination as to whether an individual is subject to formal charge is at the discretion of the district attorney.⁵

⁵ **R.S. 42:1119** provides, in part, that nepotism is committed when an agency head, member of a governing authority, or chief executive of a governmental entity employs a member of his immediate family to work in his agency or governmental entity.

R.S. 14:67 provides, in part, that theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations.

R.S. 14:72 provides, in part, that forgery is the false making or altering, with intent to defraud, of any signature to, or any part of, any writing purporting to have legal efficacy.

R.S. 14:133 provides, in part, that filing false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation, or rule, with knowledge of its falsity, any forged document, any wrongfully altered document, or any document containing a false statement or false representation of a material fact.

R.S. 14:134 provides, in part, that malfeasance in office is committed when any public officer or public employee shall (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.

R.S. 14:138 provides, in part, that payroll fraud is committed when any public officer or public employee shall carry, cause to be carried, or permit to be carried, directly or indirectly, upon the employment list or payroll of his office, the name of any person as employee, or shall pay any employee, with knowledge that such employee is receiving payment or compensation for services not actually rendered by said employee or for services grossly inadequate for such payment or compensation.

R.S. 44:36 provides, in part, that all persons and public bodies having custody or control of any public record other than permanent records required by existing law to be kept all the time, shall exercise diligence and care in preserving the public record for a period of time as specified in a retention schedule or for a period of three years from the date on which the public document was made.

18 U.S.C. §666 provides, in part, that theft concerning programs receiving federal funds occurs when an agent of an organization, state, local, or Indian tribal government or any agency thereof embezzles, steals, obtains by fraud, or otherwise intentionally misapplies property that is valued at \$5,000 or more and is owned by or under control of such organization, state, or agency when the organization, state, or agency receives in any one year period, benefits in excess of \$10,000 under a federal program involving a grant contract, or other form of federal assistance.

18 U.S.C. §1001, "False Statement" states, in part, that whoever knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

The OPSB and management should adopt the following recommendations:

Payroll

1. The school board should use Oracle reports to monitor employee stipend payments.
2. The school board should establish and maintain stipend approval authority.
3. The school board should organize stipend documentation in a secure location and retain these records in accordance with state and federal laws.
4. The school board should follow the stipend payment frequency in the United Teachers of New Orleans bargaining agreement.
5. The school board should consider recovering unsupported stipend payments from employees.

Consolidated Programs and External Grants

1. The school board should review Oracle stipend payment reports and reconcile stipend payments to approved activities.
2. The school board should establish clear, written policies for the approval and monitoring processes of stipend payments.

Policy

1. The school board should establish policies to clearly define the difference between stipend payments and overtime.
2. The school board should monitor payments made to principals and employees for PTSA funds and ensure that contracts exist for these payments.
3. The school board should reduce its additional compensation payments to a reasonable level comparable to similar sized school boards.
4. The school board should comply with its ethics policy and the Louisiana Code of Governmental Ethics.

Assault Pay

1. The school board should discontinue the practice of providing salary increases to employees on assault pay.
2. The school board should adjust the salary of all employees currently on assault pay to their salary at the time of the assault.

3. The school board should determine the amount overpaid to all employees on assault pay and request restitution. If the OPSB does not make any efforts to recoup the overpayment, the school board would be in violation of Article 7, Section 14 of the Louisiana Constitution.
4. The school board should inform Louisiana Teacher's Retirement System regarding the overpayment of salary and subsequent retirement benefits of employees receiving assault pay and request a refund of employer and employee contributions paid to the retirement system in error.
5. The school board should reduce the salary of all employees on assault pay by the amount of workers' compensation benefits they are receiving.
6. The school board should establish a budget unit to monitor costs paid to employees receiving assault pay benefits and require the Risk Management Department to review the status of those employees on a monthly basis.
7. The school board should establish an effective return-to-work program. A return-to-work program should provide a means to return employees to meaningful, productive employment following work-related or off-the-job injuries or illnesses. If an employee is able to work but is unable to return to his or her regular duties, the policy should specify the possible options, when available, for the employee to return to work in a modified or alternative assignment.

The Orleans Parish School Board is a political subdivision created for providing public education to the residents of Orleans Parish under state law, Louisiana Revised Statutes 17:51 and 17:121, as amended. The school board is presently comprised of seven members elected by districts serving concurrent four-year terms; these terms began January 2005.

The school board selects and appoints the superintendent to manage the day-to-day operations. The school board is comprised of a central office, more than 128 schools and educational support facilities. Student enrollment for the 2004-2005 year was approximately 65,349 regular and special education students. The school board employs more than 8,897 persons.

Through data analysis, we discovered possible improprieties involving the school board's stipend wages and sick leave benefits paid to employees. This audit was performed to determine if employees received stipend wages and sick leave benefits they were not entitled to receive.

The procedures performed during the fraud audit consisted of the following:

- (1) interviewing employees and officials of the school board;
- (2) interviewing other persons as appropriate;
- (3) examining selected school board records;
- (4) performing observations and analytical tests; and
- (5) reviewing applicable state and federal laws and regulations.

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Management's Response



New Orleans Public Schools

3510 General de Gaulle Drive
New Orleans, Louisiana 70114

Ora Watson, Ph.D.

Interim Deputy Superintendent
504.304.5660
504.309-5351 Fax

August 17, 2005

VIA FACSIMILE: (225) 339-3987
& U.S. MAIL

Mr. Steve J. Theriot, CPA
Legislative Auditor
Office of the Legislative Auditor
Compliance Audit Division
P. O. Box 94397
Baton Rouge, La. 70804-9397

Re: Response of the Orleans Parish School Board/New Orleans Public Schools
to the June 27, 2005, Draft Audit Report

Dear Mr. Theriot:

This office is in receipt of the copy of the confidential draft compliance audit report dated June 27, 2005. In response to the systemic conditions noted, the administration has directed the following to be implemented:

- (1) ***Concern: An administrator in the Numeracy department paid her daughter-in-law at least \$1,120 in stipend wages for work she did not perform.***

Response: Department administrators no longer have the authority to authorize stipend payments. Further, no longer can department administrators establish conditions under which stipends are to be paid, without prior approval of senior executive administrators to whom they report.

- (2) ***Concern: Employees received stipend wages for performing unsupervised work at their homes.***

Response: Stipend payments will no longer be paid to employees for work performed at the employee's home, with or without approval and/or authorization.

- (3) ***Concern: The payroll department ignored school district policy and paid stipend wages without proper approval.***

Response: Stipend payments can no longer be paid without the written signature approval of the Area Superintendent and the Deputy Superintendent of Operations. Additionally, once it was discovered that the Payroll Director was ignoring District, that

person was transferred, the job posted and a new Payroll Director hired. No longer are unauthorized stipend payments made to individuals.

- (4) Concern: *Timesheets and payroll records were missing from the payroll department.***

Response: The payroll clerk responsible for the payment of stipends has implemented a new filing procedure that makes it possible to maintain an accurate accounting of all payroll records received and processed. Principals and department heads may no longer walk stipend requests directly to the payroll clerk's office.

- (5) Concern: *There is no board policy which defines approved activities of employees eligible to receive stipend wages.***

Response: Those recommendations have been made to the chair of the policy committee of the Board. At this time, those policy recommendations are under consideration by the policy committee for future implementation.

- (6) Concern: *The practice of paying stipend wages for extra work may violate the Board policy of not paying overtime to administrative staff.***

Response: This practice was investigated by an Administrator of the District. The findings of that investigation lead to the conclusion that the practice should cease immediately not only for the person named, but for all administrators found to be in violation of the policy.

- (7) Concern: *A principal received \$22,870 in stipend wages for working on unapproved after school and summer programs sponsored by the Parent-Teacher-Student Association.***

Response: The principal in question has been notified that this practice should and will cease. Further, appropriate practices and measures will be put in place to ensure clarity regarding this issue which has been regarded, in the past, as not having violated professional ethics of public officials.

- (8) Concern: *Employees Improperly Paid Sick Leave Benefits***

Response: The District has discontinued the practice of increasing employees' salaries who are on assault leave pay. The salary of any employee who is on assault leave pay has been adjusted to reflect the salary that the employee was receiving at the time he/she first began the assault leave. A determination of the overpayment to the employees in question has been made and steps to recover the overpayments have begun. Further, the Risk Manager hired by the District has been actively investigating and/or monitoring the status of all employees who are on workers' compensation leave, sick leave, and/or assault leave to determine the employees' continuing eligibility for the receipt of benefits.

An effective return-to-work program is also in the works by both the Risk Management Department, as well as the Human Resources Office.

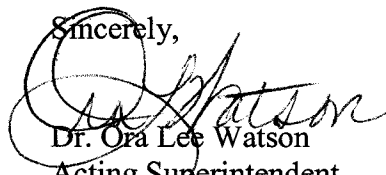
In addition to the processes implemented as described hereinabove, the district, through the Office of General Counsel has begun training programs for all principals, teachers and other employees on various topics, including, but not limited to selected provisions of the state ethics code pertaining to the acceptance of donations. In fact, all district elementary, middle and high schools principals participated in a training seminar during the first week of August 2005. The topics covered during the training included, but was not limited to, the legalities of accepting restricted donations versus unrestricted donations from various organizations, including Parent-Teacher Associations and Organizations. In addition, all principals who attended the training were asked to sign acknowledgment forms, acknowledging receipt of the training and training materials that were disseminated.

The district, in conjunction with the board, has also implemented new procedures for the acceptance of all monetary donations, irrespective of the dollar amount. The board must accept, approve and designate where all monetary donations will be expended, as well as, all non-monetary donations that exceed a dollar value of \$5,000.00.

Finally, the Orleans Parish School Board is considering new policies that will clearly define the parameters for accepting donations, both monetary and non-monetary. While procedures will begin immediately, policies should be implemented within the next one to two months.

The Orleans Parish School Board/New Orleans Public Schools has worked diligently to implement all of the recommendations as suggested by staff members of the Legislative Auditor's Office. We take seriously our duty to manage and operate both an academically and fiscally sound school system and look forward to continuing a positive working relationship with the Legislative Auditor's Office.

Sincerely,



Dr. Ora Lee Watson
Acting Superintendent

cc: The Honorable Torin Sanders
The Honorable Lourdes Moran
The Honorable Jimmie Farenholtz
The Honorable Heidi Lovett Daniels
The Honorable Una Anderson
The Honorable Cynthia Cade
The Honorable Phyllis Landrieu
Ms. Regina H. Bartholomew, Interim General Counsel

Lundeen & Associates, LLC

Attorneys at Law

Mailing Address:
203 Carondelet Street
Suite 710
New Orleans, Louisiana 70130
Telephone: (504) 552-4272

August 18, 2005

Via facsimile no. 225-339-3987

Ms. Jenifer Schaye
Mr. Kevin Kelley
Office of the Legislative Auditor
Compliance Audit Division
Baton Rouge, LA

RE: Our Client: Bobbie Anderson
School: Johnson C. Lockett Elementary School Teacher

Dear Ms. Schaye and Mr. Kelley:

Thank you for the opportunity to respond to the audit report on behalf of Ms. Anderson. As with all teachers who may be included in your report, there are a few general points that are significant:

*Ms. Anderson was seriously injured when a student intentionally and deliberately attacked her while she was fulfilling her duties and responsibilities as a public school teacher.

*Because of the severity of the deliberate act committed by the student who attacked Ms. Anderson, Ms. Anderson's doctors have determined that she is still disabled from working. She has undergone two surgeries and still faces more surgeries to correct the damages done to her body. Due to the physical and psychological damage this student inflicted upon her, Ms. Anderson's day to day quality of life has been severely affected.

*In response to the increasing problem of students seriously attacking and injuring their public school teachers, Louisiana's legislature created special legislation to protect teachers and to foster and encourage qualified teachers to work in Louisiana's public schools to educate Louisiana's children. As stated in a case from the Fourth Circuit Court of Appeal, "the Louisiana Legislature's adoption of LSA-R.S. 17:1201(C), the assault pay statute, in 1983 reflects its concern for the fact that public school teachers face increasingly greater risks in our society." Under Louisiana law, teachers and other employees who are injured or disabled because of an assault or battery committed by a student are entitled to receive full salary without loss of sick leave days. According to a court decision in 1999, such teachers are entitled to receive full salary "until their disability ceases to exist."

After the student battered Ms. Anderson and despite her ongoing pain problems, she attempted to return to work on three occasions from 1989 through 1994; however, despite her efforts, she was unable to keep working due to her injuries associated with the attack. During the periods that Ms. Anderson returned to work, she was paid her full salary, like all other working School Board teachers, consistent with her educational degrees and years of experience. During the periods in which she was working, she did not receive workers' compensation or other assault pay benefits. After a long struggle to continue working, in January 1995, Ms. Anderson went out on leave, during which time she was supposed to receive workers' compensation benefits and assault pay benefits. The School Board would pay Ms. Anderson's assault pay benefits by sending her a check minus the amount of her workers' compensation benefits.

On February 13, 1996, LIGA, which stood in place of the School Board's workers' compensation insurance carrier, stopped paying workers' compensation benefits to Ms. Anderson. Instead of adjusting the amount it paid, the School Board continued to pay Ms. Anderson an assault pay check minus the amount of the workers' compensation check she was no longer receiving, until approximately three and half years later in September 1999.

Ms. Anderson filed a workers' compensation claim on June 26, 1996, to compel LIGA to pay workers' compensation indemnity benefits to her. At the time the case went to trial, LIGA and the School Board agreed and stipulated that Ms. Anderson was still temporarily totally disabled as a result of the attack. This suit went on for approximately five and a half years before Ms. Anderson received a final judgment in her favor in December 2001. The judgment did not determine that there was any overpayment to Ms. Anderson.

LIGA did not pay this judgment that it owed to Ms. Anderson until February 2002. During this time, she attempted to contact the School Board to ask how to handle her receipt of workers' compensation benefits and her assault pay. The School Board advised her that it could not change its system without great problems. It was determined that to prevent problems, Ms. Anderson would send the School Board checks in the amount of her workers' compensation checks, which she began doing when she started receiving workers' compensation checks at her home.

For some time after she received the money from the judgment verbal and written communications were had with the School Board and/or its attorneys to determine if Ms. Anderson owed any sums back to the School Board as a result of the December 2001 judgment. After no success in obtaining a response from the School Board, Ms. Anderson's attorney sent the following question to the School Board's attorneys: "If you claim that the OPSB is entitled to any reimbursement or other credit from Ms. Anderson, please fully identify the same, specifying the amount you claim the OPSB is entitled to, and the legal and factual basis for your contention that the OPSB is entitled to any such reimbursement or credit from Ms. Anderson". The School Board's attorney's only response was "Unknown at this time". To date, the School Board has not made any claims that Ms. Anderson was overpaid or that she repay any sums to it, nor have they identified any such sums or how any such sums would be calculated, despite Ms. Anderson's numerous informal and formal attempts to ascertain the same.

The Orleans Parish School Board has been the subject of increased criticism for many years because of severe problems associated with the handling of its finances. These situations have been highly publicized and have led to this audit report. Ms. Anderson was on a valid

leave and had no control over the School Board's issuance of her assault pay checks or its determination of any alleged overpayment. She has not been accused of any type of wrongdoing, and she is not guilty of any type of wrongdoing.

Thank you for providing me the opportunity to respond to the report.

Sincerely,


Diane R. Lundeen

RITTENBERG & SAMUEL, L.L.C.

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¹A PROFESSIONAL LAW CORPORATION

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August 9, 2005

VIA FACSIMILE NO. 225-339-3870
AND U.S. MAIL

Mr. Steve Theriot
Legislative Auditor
State of Louisiana
1600 North 3rd Street
P.O. Box 94397
Baton Rouge, Louisiana 70804-9397

RE: Orleans Parish School Board Audit

Dear Mr. Theriot:

This letter is submitted for the purpose of responding to the audit report, on behalf of our several clients whom we represent. We authorize you to attach this letter to the audit report, which we understand will be released for publication.

There are a number of points that we feel are significant:

- These employees were injured because students intentionally and deliberately hurt them while they were fulfilling their duties and responsibilities.
- Under Louisiana law, teachers and other employees and other employees who are injured or disabled because of an assault or battery committed by a student (or any person) are entitled to receive full salary without loss of sick leave days. According to a court decision in 1999, such teachers are entitled to receive full salary "until their disability ceases to exist."
- The legislative auditor has concluded that these employees were overpaid. We disagree with this conclusion, which is based upon one interpretation of Louisiana law. According to the Legislative Auditor's interpretation of the law, a teacher who is disabled because of an assault or battery by a

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student is not entitled to receive salary and step increases that other teachers enjoy. Under the interpretation, teachers who are assaulted by students are penalized because a student has injured them.

- These employees had absolutely nothing to do with the issuance of their salary checks. They have not been accused of any type of wrongdoing, and are not guilty of any type of wrongdoing. The amount of salary that they received consisted of the amount that they would have received based upon their degrees and years of experience.
- These employees were not aware of the interpretation of law that their salary should have been frozen at the level they received when they were assaulted.

The Legislative Auditor takes the position that under Louisiana law, teachers who are injured or disabled because of an attack by a student must suffer a further indignity: their salaries are frozen at the level that they received at the time they were injured because of the assault. We contend that it was never the intent of the legislature to penalize teachers by locking their salaries at that level. If such teachers had not been injured because of the deliberate actions of students, they would have continued teaching and would have received all pay raises and salary step increments as every other teacher. It is our position that the legislature never intended to penalize teachers who were injured or disabled because of an attack by a student by denying them their regular and routine pay raises.

The intent of the law is to protect teachers who are injured or disabled because of an assault, subject to the limitation that they shall not be entitled to receive both workers' compensation benefits and sick leave that would *exceed* their usual rate of pay. When a teacher's disability extends to the following school year and beyond, locking their salary at that level defeats the purpose of the law, which recognizes that teachers serve in positions that require them to hold students accountable for their behavior, and that on occasion, teachers may be the victim of an attack by a student.

The Orleans Parish School Board has been the subject of increased criticism for many years because of severe problems associated with the handling of its finances. These situations have been highly publicized. In many instances, employees received the wrong amount of salary because of some type of error that was not caused by the employee. In some instances, employees have been accused of intentional and deliberate wrongdoing, and even fraud, by participating in schemes to try to defraud the school system. The situation that has led to this audit report has absolutely nothing to do with

RITTENBERG & SAMUEL, L.L.C.

Mr. Steve Theriot

August 9, 2005

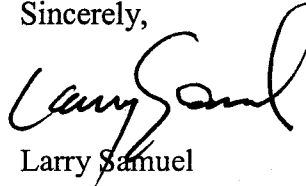
Page 3

these other cases. These employees received the amount of salary that they would have received had they been actively teaching. In fact, these employees were on valid leaves of absence that the school board reviews each year. They were not aware of any laws or court rulings that cast any doubt on this.

This situation does not involve any intentional or deliberate wrongdoing by anyone. Instead, it involves a dispute involving an interpretation of a law.

Thank you for this opportunity to provide this information for the purpose of supplementing the audit report.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Samuel", with a stylized, cursive script.

Larry Samuel

LS/gfh

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August 12, 2005

Mr. Steve J. Theriot, CPA
Legislative Auditor
Office of the Legislative Auditor
Compliance Audit Division
P. O. Box 94397
Baton Rouge, LA 70804-9397

Re: Orleans Parish School District
Lusher Elementary School

Dear Mr. Theriot:

This letter is in response to the proposed findings concerning the donations made by the Lusher Elementary School PTSA to the Orleans Parish School Board, which are approved by the Board's administrative staff and then paid to teachers and the principal for work performed when they are not being compensated by the OPSB. Thank you for the opportunity to respond.

I understand that the statement set forth in the Audit that the "stipend payments may not comply with the Ethics Advisory Opinion 2000-205" is not a finding of non-compliance. Rather, I understand that this is a question being posed, which may be decided by another entity with the jurisdiction to fully consider the question. The PTSA has consistently acted in a good faith attempt to comply with the law. The Lusher PTSA sought Opinion 2000-205, and has made the donations in a manner that it believed was in accord with the Opinion.

It is clear that there has been full compliance with Ethics Advisory Opinion 2000-205. The Opinion holds the following:

1. That the PTSA, which is a non-public body, may make donations to the Orleans Parish School Board with a stated desire for its use;

2. That the PTSA may not make a restrictive donation, i.e., specifically require that the donated money for used for a stated purpose; and
3. That the OPSB may receive the donated money and, as stated in the Opinion, use the funds "for their intended purpose."

The Lusher PTSA has, since the issuance of the Opinion, made unrestricted donations to the OPSB. The document accompanying the check states that "we are making a donation to the Orleans Parish School Board in the amount of . . . with the intent that these funds be used to compensate the following individuals." **There is no condition presented by this language; there is nothing in the letter that states that if the stated intent is not complied with, the donation is revoked or that the donation may be used only for the purpose of the compensating the listed individuals.**

If the PTSA's use of the word "intent" is being deemed to make the donation restrictive, this is a misreading. The word "intent" is understood to mean a hope or a goal, as stated by *Roget's New Millennium Thesaurus*, First Edition 2005, and is inherently unrestrictive. But even if the word "intent" is ambiguous, the letter accompanying the donation makes no mention that the donation is forfeited if used for a purpose other than that sought.

Even the Ethics Opinion references the donor's intent. The Opinion notes that the donation would be made "with the expressed hope of the PTSA that the funds be used for their intended purpose." This was deemed to be non-restrictive by the Ethics Board, and differs in no meaningful way from the PTSA's written request. In short, the proposed Audit finding makes an unwarranted and false distinction between "hope" and "intent."

The Orleans Parish School Board has understood the statement of "intent" is not a restrictive donation. OPSB, through its administrative staff, has approved the Lusher PTSA requests with this language since 2000, through the administrations of three superintendents.

On August 4, 2005, the Orleans Parish School Board endorsed the language and process used by the Lusher PTSA. On August 4, the OPSB's Interim Deputy General Counsel distributed a guide entitled "Legal and Ethical Dilemmas for the Orleans Parish School Board Principal." At page 6, the document uses the example of a booster club. It states that the donation "may not make a donation for the specific purpose of supplementing the salary of the band director," it may "suggest what the donation be used for, but not mandate that purpose." **At page 11, the guide provides that the OPSB will "acknowledge and receive the donation and vote on where the money will be spent, keeping in mind the donor's intent/suggestion."** I have enclosed the cited portions of the guide. The PTSA has stated that it is making a donation; has stated its intent in making the donation; and has submitted those requests to the OPSB administration, all in

compliance with the Opinion and the OPSB's requirements. That the Administration has chosen to approve the donations at the staff level is not within the control of the PTSA.

If the concern is that the donation should not state that it is intended for certain individuals, this is contrary to the Ethics Opinion and Attorney General Opinion. In its Ethics Quarterly, July 2000 (copy attached), the Ethics Board describes Opinion 2000-205 this way:

The Orleans Parish School Board may pay six teachers at the Lusher School to analyze the state accountability test in science and social studies and to plan for instructional programs and staff development of teachers for the next school year, even if the Parent-Teacher-Student Association ("PTSA") of the school makes an unconditional donation to the school board indicating that the PTSA is making the unrestricted donation with the expressed hope that the money be used to pay the six teachers. §1111A No. 2000-205.

Thus, **the Ethics Board found permissible a request that the money go to individuals named in the donation, as well as the payment by the OPSB to them.**

Donations that name the intended recipient have long been approved. Coaches and band leaders are often stated as the intended recipients for donations. Attorney General Opinion 99-81, a copy of which is enclosed, states that it is lawful for booster clubs to supplement one or more coaches' salaries by making donations to the school board and the board honoring the request that the donation go to the intended coaches. There would be no way for the booster club's donation to reach the intended coaches without naming them. In AG Opinion 99-81, the Attorney General notes that the Ethics Board approved the precise process followed by the Lusher PTSA here. This echoes the Attorney General's Opinion 86-28, which found donations to supplement coaches' pay to be permissible.

If your concern is whether the Lusher teachers and principal can be paid, through the donation, for the time worked when they are not compensated by OPSB, it is well settled that they may receive this pay. Louisiana Revised Statute 17:422(A) states:

- A. Nothing contained in R.S. 17:421 shall prevent parish or city school boards from providing additional compensation or increased increments, for special teachers, such as principals, assistant principals, coaches, librarians, agriculture teachers, home economics teachers, music teachers, or any other teachers; and furthermore the parish and city school boards shall provide that no teacher will receive less than the salary received during 1955-1956 for 9 months' work.

In Attorney General Opinion No. 79-1382, the Attorney General expressly stated that "teachers who perform extra duties may receive extra compensation." This was reaffirmed in Attorney General Opinions Nos. 99-81 and 86-28, where the Attorney General has held that this law forms the basis for allowing booster clubs to make donations with the intent that the school board supplement the coaches' salaries. On its face, R.S. 17:422(A) extends to principals.

The finding that the Lusher principal received \$22,870 in 2004 funded from the Lusher PTSA's donations is in error. The Lusher PTSA donated \$16,557.96 in 2004 with the intent that it be paid to the principal; much more was donated with the request it be paid to teachers and other staff employees. The principal also received stipends directly from the OPSB, as did other principals in the School District, for various services performed such as assistance with in-service programs, participation in professional development and grant writing. All of these services were performed at the request of the OPSB administration and the paper work for the stipend was generated by OPSB.

The donations made by the PTSA for the principal were for time that she was not compensated by the OPSB. The PTSA sponsors Lusher's "Arts After Hours" and "Extended Day" programs, which are designed to provide constructive after school activities for all students in Kindergarten through 8th grade and are paid for entirely by the PTSA through donations to the OPSB. Lusher teachers staff these programs. The Lusher PTSA requested and the principal agreed that she would oversee the planning and operation of these programs as the program administrator. It was further agreed that a benchmark of \$29 an hour would be used for the donations that would be made for the principal; that the teachers would receive their pay from the PTSA budgeted amounts for donations; and that the principal would be receive as a donation only those amounts remaining in the PTSA budget for the programs, not to exceed \$29 per hour. The AAH and Extended Day programs operate after school from about 4:00 p.m. to 6:00 p.m., five days a week during the school year. In 2004, the principal received \$983 per month from PTSA donations for overseeing both programs. The total donation was \$9,830. This was an average of 33.89 hours a month or about 8.5 hours a week at the benchmark of \$29 per hour. The program operated for 10 hours a week; obviously, the principal was not compensated for all hours the program operated.

The remainder of the amount the PTSA donated with the intention it be paid to the principal was \$6727.96, for the time she spent working on school related matters during uncompensated time. The principal is compensated on a 10½ month schedule by OPSB. See, La. R.S. 17:421.5. The 1 ½ month period is uncompensated by OPSB. This pay was for the 23 working days that the principal was not compensated by the OPSB. The pay rate used by the PTSA for its donation was the OPSB's rate of pay to the principal. The duties performed included planning and implementing a capital drive, writing grants to improve services and resources for students, interviewing and selecting teachers and scheduling students for regular and after school programs, coordinating the

schedules of the elementary and middle schools, developing curriculum and ensuring curriculum alignment in both schools, overseeing maintenance projects initiated by parents at both school campuses, meeting with parents to plan for upcoming events, and meeting with university and business partners to coordinate their support of the Lusher program.

From the above, it is clear that the PTSA donations were not based on 15 hours a week of compensation at \$29 an hour as the Audit states.

Concerning time sheets, the PTSA did not request that the principal complete time sheets nor was she required to do so by OPSB. She is responsible for the full operation of the programs whereas the teachers may only work 1 hour, 2 to 3 days a week; thus the need for the teachers to fill out time sheets but not the principal. The principal performed the duties for which the donations were made; the PTSA officers were satisfied that the principal performed the services for which she was compensated. She was observed performing those duties as well as her summer work beyond the regular school year. PTSA officers would speak to and meet with the principal at the school during the summer months.

The Audit states that teachers completed time sheets, with the clear implication that this is evidence of work performed for the AAH program. It criticizes the principal for not keeping time sheets. Yet, at its conclusion the Audit contradicts itself by stating that it cannot be determined if the teachers performed the work or were paid accurately. Wholly apart from the fact that OPSB accepted the donations and did not mandate further evidence that the principal and the teachers performed the work, the PTSA was satisfied that the work was performed and made the donations accordingly.

As with the principal, the teachers were observed running their respective AAH programs. **The AAH program has been recognized by the Annenberg-Getty Foundation as part of their Transforming Education through the Arts Challenge (one of 36 National Partners in the country). The AAH program has been sited in the PBS series "What Works in the Arts," currently airing across the country and being used at universities for teacher training. The AAH program received the Governor's Creative Ticket Award in 2003 and 2004, and the National Creative Ticket Award through the Kennedy Center for Performing Arts in 2004 (one of five in the country). Clearly, the teachers were working and achieved significant success under the direction of the principal.**

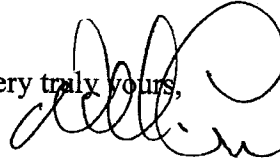
The after school programs which receive PTSA support through donations also include athletics—at least eight different sports. The PTSA donations also support clubs for chess and computers, the homework center for assisting and tutoring children, and a program to support "at risk" students through mentoring, tutoring and family support.

Steven Theriot
Legislative Auditor
August 12, 2005
Page 6 of 6

In sum, the Lusher PTSA, the teachers and the principal have striven to meet the letter and the spirit of the law. To the extent there have been any procedural deficiencies, they are easily corrected. Certainly, there is no basis to discontinue the ability of the OPSB to receive donations that allow programs like AAH and Extended Day, to exist and benefit the students.

If I can be of any assistance on any matter raised in this letter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'William Lurye', written over the closing 'Very truly yours,'.

William Lurye

WL/mw
Enclosures



2000-205

Created By: Sylvia Scott on 06/05/2000 at 11:42 AM
Category: Ethics Advisory Opinions

May 31, 2000

Mr. David A. Marcello
Attorney at Law
6329 Ferret Street, Suite 130
New Orleans, LA 70118

RE: Ethics Board Docket No. 2000-205

Dear Mr. Marcello:

Thank you for appearing before the Board of Ethics at its May 18, 2000 meeting in connection with your request for an advisory opinion concerning the Parent-Teacher-Student Association (PTSA) of Lusher School in New Orleans. You stated that the PTSA would like to contribute approximately \$2,000 to the Orleans Parish School Board to pay for six teachers at the Lusher School to analyze the state accountability test in science and social studies and to plan for instructional programs and staff development of teachers for the next school year. The six teachers would perform these services during the summer months when they are normally uncompensated by the school system. You further stated that your donation to the Orleans Parish School Board would be conveyed by check with accompanying language to indicate that the donation would be made without restriction, but with the expressed hope of the PTSA that the funds be used for their intended purpose.

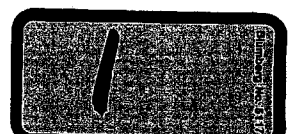
The applicable section of the Code, Section 1111A, reads in pertinent part as follows: "no public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position. . ."

The Board concluded, and instructed me to inform you, that so long as the teachers performing the described services are compensated for their work by the Orleans Parish School Board, their governmental employer, no violation of the Code of Governmental Ethics would occur. The Board noted that because the donation of the PTSA to the School Board would be unconditional, even if the School Board chooses to use the money donated to pay the teachers for their services, the Code would not be violated because the teachers would be receiving the payment from their governmental employer.

Thank you for your interest in this matter. If you have further questions, please call me at (225) 922-1400 or (800) 842-6630.

Sincerely,

LOUISIANA BOARD OF ETHICS



Maris LeBlanc McCrory
For the Board

MLM:ss

.....

LEGAL AND ETHICAL DILEMMAS FOR THE ORLEANS PARISH SCHOOL BOARD PRINCIPAL

Presented by: Ed Morris, Interim Deputy General Counsel
Orleans Parish School Board
Office of the General Counsel
3510 General DeGaulle Drive
New Orleans, LA 70114
Telephone: (504) 304-5705
Facsimile: (504) 309-5345

RESTRICTED DONATIONS

Example #1:

A parish high school band booster club wishes to make a donation to the parish school board for the purpose of providing a salary supplement to the band director. May they do so under the Ethics Code?

RESTRICTED DONATIONS cont.

Answer to Example #1:

The booster club may not make such a donation for the specific purpose of supplementing the salary of the band director. It may make a donation to the agency and suggest what the donation be used for, but not mandate that purpose.

UNRESTRICTED DONATIONS cont.

Steps to follow if you or your school is in receipt of an unrestricted donation:

- The unrestricted donation is listed on the Board's Monthly Budget and Finance Committee Meeting Agenda, through the Board Office by calling 304-5573. Board Member Lourdes Moran is the Chairperson of this Committee.
- It then moves to the Board's Monthly Committee of the Whole Meeting Agenda.
- Finally, it is presented to the Board at its regularly scheduled business meeting. The board formally acknowledges and receives the donation and votes on where the money will be spent, keeping in mind the donor's intent/suggestion.

CONTRACTS

Ethics Quarterly

Selected Opinions of the Louisiana Board of Ethics

July 2000

200 Union Plaza Boulevard, Suite 200, Baton Rouge, Louisiana 70809-7017

Vol. 6 No. 3

(225) 922-1400 or (800) 842-6630

Web Site: www.ethics.la.gov

CAMPAIGN FINANCE

SEMINAR

On August 1, 2000, a free seminar will be sponsored by the Louisiana Supervisory Committee on Campaign Finance Disclosure to provide information on the Louisiana Campaign Finance Disclosure Act and instruction as to the proper completion of reporting forms. There will be a demonstration and explanation of the voluntary filing system known as LEADERS, as well as an opportunity to ask questions.

The seminar will be held from 9:30 a.m. to 11:30 a.m. at the State Archives Building at 3851 Essen Lane in Baton Rouge. To register, call (225) 922-1400 or 1-800-842-6630.

Attorneys may earn a maximum of 2.4 CLE hours for attendance.

L & R Utilities, Inc. violated the Code of Governmental Ethics by selling a truck to the East Ouachita Recreation District No. 1, when the secretary-treasurer of the East Ouachita Recreation District No. 1, Leon Sivils, and his wife owned L & R Utilities, Inc. A \$500 fine was imposed upon L & R Utilities. §1113A No. 1999-507

A state representative may become an attorney for a town within his district; he will be required to file an annual personal financial disclosure statement disclosing the income he receives as the town attorney. §1113D & §1114.1 No. 2000-224

The husband of the current principal of Swartz Elementary School and a corporation owned by the principal and her husband are prohibited from selling a piece of property to the Ouachita Parish School Board that will be used to build a new school, if the wife will be the principal at the new school. The husband or the corporation may sell or donate the property to a third party, who then may sell it or donate it to the school board, as long as there was no agreement that the property later be sold or donated to the school. The school board could expropriate the land in accordance with the laws governing expropriation. §1113A No. 2000-251

Ethics

PROHIBITED TRANSACTIONS

F. Phillips General Contractors, Inc. violated the Code of Governmental Ethics by bidding on and entering into a contract with the City of Ville Platte to build the Southside Community Center, when F. Phillips General Contractors, Inc. is owned by the immediate family members of Gwen Phillips, the Ville Platte City Clerk. A \$4,000 fine was imposed upon F. Phillips General Contractors, Inc. §1113A No. 1999-368

A business which is owned by the father-in-law of the Assumption Parish Secretary-Treasurer is prohibited from transacting business with the parish. §1113A No. 2000-335

The husband of the secretary-treasurer for the East Carroll Parish Police Jury is prohibited from bidding on or entering into a contract to expand the East Carroll Parish Prison. §1113A No. 2000-387



Firefighters in Washington Parish are prohibited from performing services, including carpentry, plumbing, electrical, or grass cutting services for the fire station to which they are assigned. §1113A No. 2000-409

Employees of the Recreation and Park Commission for the Parish of East Baton Rouge ("BREC") are prohibited from bidding on surplus property which originates from the employee's agency, that is the particular department or division of BREC in which the employee works. §1113A No. 2000-446

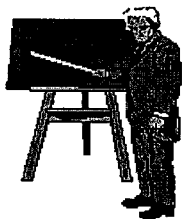
PARTICIPATION



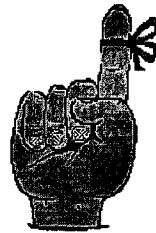
A company that is partially owned by the brother of an appointed member of the West Carroll Parish Ambulance Service District may not maintain its contract with the ambulance service district. Also, the member of the ambulance service district may not participate in a transaction in which his brother has a substantial economic interest. §1112B(1) & §1113B No. 2000-406

NEPOTISM

The son of a member of the Jackson Parish School Board may be employed with the school board as long as he is certified to teach. It is not sufficient for him to teach pursuant to the "Circular 665" policy. §1119B No. 2000-126



The son of the athletic director of Ruston High School is prohibited from being employed at the high school as a coach; however, he is not prohibited from being employed as a teacher by the school. §1119A No. 2000-438



A REMINDER TO ALL SCHOOL BOARD MEMBERS AND SUPERINTENDENTS

Each member of a school board and each superintendent who has an immediate family member employed within their school district **must** file a disclosure statement with the Board of Ethics within thirty (30) days of the beginning of the school year. The Board has developed a form to assist school board members and superintendents in complying with this requirement. The form has been distributed to the Ethics liaison within your district; however, forms may also be obtained on the Board's web site at www.ethics.state.la.us or by contacting our office at 1-800-842-6630 or (225) 922-1400. Failure to timely file this disclosure statement will result in the imposition of a \$50 fine for each day that the report is not timely filed.

ILLEGAL PAYMENTS

The Orleans Parish School Board may pay six teachers at the Lusher School to analyze the state accountability test in science and social studies and to plan for instructional programs and staff development of teachers for the next school year, even if the Parent-Teacher-Student Association ("PTSA") of the school makes an unconditional donation to the school board indicating that the PTSA is making the unrestricted donation with the expressed hope that the money be used to pay the six teachers. §1111A No. 2000-205

Scholars and poets employed by Louisiana universities may receive compensation from Nicholls State University to participate in symposia and readings, as long as the services for which they are being compensated are unrelated to the responsibilities,

OUTSIDE SERVICES & ACTIVITIES

The Court of Appeal, First Circuit upheld the decision of the Board of Ethics that John T. "Tommy"

McJunkins, a member of the Ouachita Parish Police Jury, and Corporate Computing, Inc., a company in which Mr. McJunkins owned more than twenty-five percent, violated the Code of Governmental Ethics by providing compensated computing services and equipment to Luffey, Huffman, & Monroe, CPA, a firm which had a contractual relationship with the Ouachita Parish Police Jury. The Board's imposition of a \$3,600 fine was affirmed. §1111C(2)(d) No. 1997-606

POST-EMPLOYMENT

The former construction project manager for the Lafayette Parish School Board may contract with the school board to perform design work because he did not perform design work while he was employed by the school board. §1121B No. 2000-360

An appointed board member of the Livingston Parish Communications District may not be hired to serve as the district's executive director during the two-year period following the termination of his service on that board. §1113B & §1121A(2) No. 2000-379

The supervisor of the New Iberia Office of Motor Vehicles ("OMV") may work for a public tag agent upon her retirement; however, she is prohibited from assisting the public tag agent in a transaction that involves the New Iberia OMV. §1121A No. 2000-388

Campaign Finance

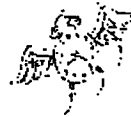


The Louisiana Supreme Court declared R.S. 18:1505.2(L)(3)(a)(i) and R.S. 18:1505.2(L)(3)(b)(i), as applied to R.S. 18:1505.2(L)(3)(a)(i), unconstitutional. Therefore, a candidate is not prohibited from receiving a contribution from a person that holds a license or permit pursuant to the Video Draw Poker Devices Control Law as a distributor or manufacturer of gaming devices, a device service entity, or any person who owns a truck stop,

v. State of Louisiana, et al., 99-2337 (La. 10/29/99), 751 So.2d 823, writ denied ___ U.S. ___ (2000).

A candidate may not amend his campaign finance reports after an election to change the category of funds previously reported as a contribution to a loan. No. 2000-272

A candidate may use campaign funds to pay childcare expenses to allow him (1) to attend a fundraiser supporting his own candidacy, (2) to attend a fundraiser for another candidate, and (3) to attend a social engagement for a community event, when his appearance will enhance his candidacy. However, the childcare provider may not be the spouse or minor child of the candidate. R.S. 18:1505.2I No. 2000-437



****DEADLINE****

ATTENTION ALL LOBBYISTS, CANDIDATES, POLITICAL COMMITTEES!

LOBBYISTS

August 15, 2000 is the filing deadline for lobbyist expenditure reports. The late fee for lobbyist expenditure reports that are not timely filed is \$50 per day.

CANDIDATES AND POLITICAL COMMITTEES

All candidates and committees in the October 7, 2000 primary election are required to file the following reports:

DUE DATES:

September 7, 2000: 30th day prior to primary
September 27, 2000: 10th day prior to primary
October 17, 2000: election day expenditures
October 30, 2000: 10th day prior to general

Automatic late fees will be assessed for all reports not timely filed. The late fees for candidates and

licensed pari-mutuel or off-track wagering facility which is a licensed device establishment. However, persons substantially interested in the riverboat gaming and land-based casino gaming industries may *not* make campaign contributions to state and local candidates. Penn, et al.

political committees are as follows:

Major offices: \$100/day
District offices: \$60/day
Any other office: \$40/day
PACs: \$200/day

Campaign finance reports that are filed more than ten (10) days late may result in an additional penalty of up to \$10,000 after an administrative hearing.

-3-



If you wish to continue receiving editions of the Ethics Quarterly newsletter, you **MUST** call us at (225) 922-1400 or 1-800-842-6630, fax us at (225) 922-1414, or mail to us a confirmation of your desire to continue receiving this newsletter. Unless we receive positive communication from you or your agency, this will be your last automatic edition of the Ethics Quarterly. **Our office must receive your confirmation no later than September 30, 2000.**

Please note that the advisory opinions rendered by the Board of Ethics are based upon the particular fact presented. As such, the scope of each opinion is limited to the parties and facts involved in each case. However, the opinions may serve as a general guide to other individuals similarly situated. You can research advisory opinions rendered since 1997 at the Board's web site at www.ethics.state.la.us. You may always seek an advisory opinion specific to your situation by writing to the Board at:

8401 United Plaza Blvd., Suite 200

Baton Rouge, LA 70809-7017

*You may always seek **informal** advice from the staff attorneys for the Board. Call (225) 922-1400 or, toll free, 1-800-842-6630, Monday through Friday, 8:00 a.m. until 4:45 p.m., CST.*

Seminars may also be scheduled for your agency.

Ethics Quarterly is produced and published by the Louisiana Ethics Administration Program to highlight selected cases addressed by the Louisiana Board of Ethics pursuant to Title 42 Section 1134N of the Louisiana Revised Statutes. Specific questions with regard to a particular situation or issue should be directed to the Administrative office at 8401 United Plaza Boulevard, Suite 200, Baton Rouge, Louisiana 70809-7017 or phone (225) 922-1400 or 1-800-842-6630 or fax (225) 922-1414. This public document was published at a total cost of \$449.00. One thousand-two hundred copies of this public document were published in this first printing at a cost of \$449.00. The total cost of all printings of this document including reprints is \$449.00. This document was published by the Louisiana Ethics Administration Program located at 8401 United Plaza Blvd., Suite 200 Baton Rouge, LA 70809-7017. This material was printed in accordance with standards for printing by State Agencies established pursuant to La. R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF LOUISIANA

OPINION No. 99-81

La. Atty. Gen. Op. No. 1999-81; 1999 La. AG LEXIS 112

April 22, 1999

SYLLABUS:

[*1]

94 - SCHOOLS & SCHOOL DISTRICTS - ADMINISTRATION, GOVERNMENT AND OFFICERS

96 - SCHOOLS & SCHOOL DISTRICTS - FISCAL MANAGEMENT, DEPARTMENT OF SECURITIES AND TAXATION

97 - SCHOOLS & SCHOOL DISTRICTS - PROPERTY, CONTRACTS, ETC.

100 - SCHOOLS & SCHOOL DISTRICTS - TEACHERS, PRINCIPALS, SUPERINTENDENTS, SABBATICAL LEAVE, EXTRACURRICULAR

ACTIVITIES, STUDENTS

Louisiana Const. Of 1974, Art. 1 § 3, *LSA-R.S. 17:81, LSA-R.S. 17:421.3, LSA-R.S. 17:422A, LSA-R.S. 23:332, LSA-R.S. 42:1111A*

1) A booster club may donate monies to a local school and subsequently, the school may donate monies to the school district provided the donation is not restricted.

2) Provided the local salary schedule is in compliance with the state minimum salary in *LSA-R.S. 17:421.3* and is nondiscriminatory, a local school board can elect to pay a teacher or coach more than another if their experience and education merits it.

3) It is not legal for a school superintendent or any supervisor or principal to negotiate a salary beyond the scheduled amount without explicit approval of the Acadia Parish School Board.

REQUESTBY:

Mr. Kenneth O. Privat
Privat & Regan
Attorneys at Law
P. O. Drawer 688
Crowley, LA 70527-0688

OPINIONBY:

RICHARD P. IEYOUNG, [*2] ATTORNEY GENERAL; BETH C. LANGSTON, ASSISTANT ATTORNEY GENERAL

OPINION:

I am in receipt of your request on behalf of the Acadia Parish School Board for an Attorney General's opinion concerning the following:



1. Is it legal for the Acadia Parish School District to receive dedicated monies from the Crowley High Athletic Booster Club to supplement one or more coaches' salaries?
2. If there is an adopted salary schedule in place, can the Acadia Parish School Board pay one or more individuals beyond the scheduled amount?
3. Is it legal for the School Superintendent or any supervisor or principal to negotiate a salary beyond the scheduled amount without explicit approval of the Acadia Parish School Board?

LSA-R.S. 17:81 sets forth the general powers and duties of city and parish school boards. Section A which addresses the salaries of teachers states the following:

A. (1) Each city and parish school board shall determine the number of schools to be opened, the location of school houses, the number of teachers to be employed, and select teachers and all other certified personnel from recommendations made by the city or parish superintendent as required by this Subsection. The boards [*3] shall have authority to employ teachers by the month or by the year, and to fix their salaries; provided that there shall be no discrimination as to sex in the fixing thereof and provided further, that it is not the purpose of this Section to require or direct the reduction of any salary, or salary schedule, presently in force. The boards shall see that the provisions of the state school law are complied with. (Emphasis added).

Additionally, *LSA-R.S. 17:422A* states the following concerning additional compensation for special teachers including coaches. It states:

Nothing contained in *R.S. 17:421* shall prevent parish or city school boards from providing additional compensation or increased increments, for special teachers, such as principals, assistant principals, coaches, librarians, agriculture teachers, home economics teachers, music teachers, or any other teachers; and furthermore the parish and city school boards shall provide that no teacher will receive less than the salary received during 1955-1956 for 9 months' work.

In Attorney General Opinion No. 86-28, our office addressed the issue of whether a coach could be paid a bonus from either a public or non-public [*4] source, i.e. funds raised by school activities. We opined:

... that a bonus may not be raised by school activities and paid to that school's coach by either the groups themselves or the school board as it would violate *La. R.S. 42:1111A*. However, if this procedure is made available to all schools and the money is paid by the school board each month with reimbursement from the local school, then the money becomes a supplement to salary allowed under *LSA-R.S. 17:422*. Such a procedure must be in accordance with the guidelines set by the legislator auditor for the use of activity funds.

Additionally, you submitted the same opinion request to the Louisiana Board of Ethics. Concerning your first question, the Board stated:

The Code of Governmental Ethics would appear to prohibit the Acadia Parish School District from receiving dedicated monies from the Crowley High Athletic Booster Club to supplement one or more coaches' salaries. Section 1111A of the Code prohibits a public servant from receiving any thing of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities [*5] of his office or position. However, the Board is of the opinion that the Code of Governmental Ethics does not prohibit an agency from receiving and utilizing unrestricted donations made by nonprohibited sources of income. (Prohibited sources of income are persons who have or are seeking a business, contractual or financial relationship with the public servant's agency, who are regulated by the public employees's agency, or who has substantial economic interests which may be substantially affected by the performance or non-performance of the public employee's official duties.) Accordingly, the Board instructed me to inform you that the Code would not appear to prohibit the Crowley High Athletic Booster Club from making an

unrestricted donation to the school board. The school board could then utilize those funds in any manner not otherwise prohibited by law.

Therefore, a booster club may donate monies to a local school and subsequently, the school may donate monies to the school district provided the donation is not restricted. If the school board elects to use those funds to supplement salaries of its coaches this is permissible.

In answer to your second question, if there [*6] is an adopted local salary schedule in place, you must look to the language used in that salary schedule. As discussed in Attorney General Opinion No. 95-134:

... local school boards may not deny a teacher a scheduled state step increase under *LSA-R.S. 17:421.3*. The minimum salary schedule set forth in that statute is mandatory and, therefore, local school boards are constrained to follow the statutes.

In Attorney General Opinion No. 80-1209 our office addressed the issue of whether or not local school boards can pay qualified teachers a salary commensurate with the salary of those holding a 'Specialist in Education' degree. The author of the opinion cited *Mouras vs. Jefferson Parish School Board*, 300 So.2d 540 (4th Cir. 1974), wherein the Court held that:

... a school board's power to fix salaries includes the power to increase or decrease teachers salaries except insofar as this section provides a minimum salary schedule.

The author of the opinion also cited *Young vs. Allen Parish School Board*, 349 So.2d 469 (1975) wherein the Court held that:

... the minimum salary schedule set forth for teachers [*7] in *LSA-R.S. 17:419* to *17:422* is not a prohibition against paying more than the minimum.

In Opinion No. 80-1209 our office concluded that:

... local school boards are not prohibited from paying qualified individuals the minimum salary recommended for teachers holding a degree entitled 'Specialist in Education' even if those individuals hold a different degree, if they have substantially the same training, experience, and background.

However, please remember that Articles 1 § 3 of the Louisiana Constitution of 1974 states the following concerning the Right to Individual Dignity:

No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

LSA-R.S. 23:332 states the following concerning intentional discrimination in employment:

A. It shall be unlawful discrimination in employment for an [*8] employer to engage in any of the following practices:

(1) Intentionally fail or refuse to hire or to discharge any individual, or otherwise to intentionally discriminate against any individual with respect to his compensation, or his terms, conditions, or privileges of employment, because of the individual's race, color, religion, sex, or national origin.

Therefore, provided the local salary schedule is in compliance with the state minimum salary in *LSA-R.S. 17:421.3* and is nondiscriminatory as provided in the La. Const. Article 1 § 3 and *LSA-R.S. 23:332*, a local school board can elect to pay a teacher or coach more than another if their experience and education merits it.

Finally, you ask whether it is legal for the School Superintendent or any person or principal to negotiate a salary beyond the scheduled amount without explicit approval of the Acadia Parish School Board.

In Attorney General Opinion No. 91-91, our office opined that the superintendent of a parish school board may not enter into contracts on behalf of the board, or obligate the board's funds without being given the power to do so by the board in its adopted rules and regulations. It further states that while [*9] the superintendent is not statutorily authorized to contract or obligate funds on behalf of the Board, the Board may, if it so chooses, grant to the superintendent such powers. (Also see Attorney General Opinion No. 92-373).

I hope this opinion sufficiently addresses your concerns. If I can be of further assistance, please let me know.